IN THE

Supreme Court of the United States

No. 79-472

OCTOBER TERM, 1979

DARRELL DARWIN SMITH
Appellant.

v.

STATE OF OREGON,
Appellees.

On Appeal From The ~~Supreme Court~~
~~Of~~ Oregon ~~Ct App~~ Sup Ct

JURISDICTIONAL STATEMENT

DARRELL DARWIN SMITH, In Pro Per
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September , 1979

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SUPREME COURT OF THE UNITED STATES

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v. *Aopellant,*

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Appellant appeal from the judgement of the Supreme Court of Oregon, entered on June 25, 1979 affirming the decision of the Court of Appeals of Oregon which affirmed the decision of the District Court for the State of Oregon for Wasco County, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

OPINIONS BELOW

The decision and opinion of the District Court for the State of Oregon for Wasco County is set forth in Appendix A at page A-1. The decision and opinion of the Court of the Court of Appeals of Oregon is set forth in Appendix A at page A2. The decision and opinion of the Supreme Court of the State of Oregon is set forth in Appendix A at page A2.

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CONSTITUTIONAL PROVISIONS AND STATUTES

SECONDARY AUTHORITIES

JURISDICTION

Appellant initiated this cause in the District Court of the State of Oregon for Wasco County, pursuit to Article I, Sec 17 of the Oregon State Constitution, seeking a "Special Appearance" rather than "General", to secure a jury trial to determine the Justice of the 55 MPH Maximum National Speed Limit, as it was enacted and as it is enforced in the State of Oregon, to render this "rule" unconstitutional, as this rule contravened the Supremacy Clause of the United States Constitution, as it was enacted and is enforced through Bribery, Coercion, and/or Extortion, and to dismiss the charge against defendant of being in violation of O.R.S. 487.475 (1) a class C traffic infraction. Article I, Sec. 16 of the Oregon State Constitution clearly states, "In all criminal cases whatever, the jury shall have the right to determine the law, and the facts.....as in civil cases."

The District Court for Wasco County denied defendants request for a jury trial. The Court, lacking jurisdiction in the case, denied defendants request for a dismissal filed in the form of a "Motion to Dismiss (Lack of Jurisdiction)", on September 18, 1978. Appellant appealed both decisions directly to the Oregon Court of Appeals, which, on April 23, 1979 affirmed without opinion the lower court decision. Appellant filed a timely "Petition for Review", of the Court of Appeals decision, in the Supreme Court of Oregon on

May 22, 1979, which, denied review on June 13, 1979, adjudged and ordered that the decision entered below in this cause is affirmed.

The Notice of Appeal was timely filed in the Supreme Court of Oregon on the 16th day of July, 1979.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1257 (2) this being an appeal from the final judgement of the Supreme Court of Oregon, the highest court of that State, affirming the decision of the lower court to deny defendant of his right secured by Amendment VII of the United States Constitution and Article I, Sec. 17 of the Oregon State Constitution and affirming the lower court has jurisdiction to decide that the 55 MPH National Maximum Speed limit, as enacted and enforced in Oregon is not repugnant to Article VI, Sec. 2 of the United States Constitution.

QUESTIONS PRESENTED

1.

Is the District Court for Wasco County Oregon, the Court of Appeals of Oregon, and the Supreme Court of Oregon denying defendants' request, at Supreme Federal Common Law, for the Federal Common Law Jury of 12 (twelve) men to decide on both the facts and the justice of the Law/rule, and the jurisdiction of the District Court for Wasco County, repugnant to Amendment VII, Sec. 1 of the United States Constitution on the ground that such a decision denies defendant of the right to a jury trial?

2.

Is the decision of the below mentioned State Courts of Oregon, to deprive the defendant of the right guaranteed by Amendment VII, Sec. 1, of the United States Constitution repugnant to Amendment XIV, Sec. 1, and Amendment V, Sec. 1 of the United States Constitution on the ground it deprives defendant of the right of "due process of law"?

3.

Is the Oregon Legislation, delegating the authority to the Oregon Transportation Commission to govern the Maximum Speed Limit in Oregon, in the name of conservation repugnant to Article IV Sec. 4 of the United States Constitution on the ground that such a legislative act delegates to another branch of the State Government, powers mandated only to the Legislative Branch of the State Government and contrary to a republician form of Government?

4.

Is the Oregon Transportation Commission enactment of the 55 MPH National Maximum Speed Limit law/rule repudiated by Article VI, Sec. 2 of the United States Constitution on the ground that the proceduer used for the enactment of the rule and the rule itself are contrary to the United States Constitution and Federal laws in pursuant thereof?

5.

Is the District Court for Wasco County Oregon forbidden jurisdiction in the instance case, as pursuant to Title 28 U.S.C. Sec. 1355, on the ground that it is for the recovery of a fine incurred under an Act of Congress?

6.

Is the District Court for Wasco County Oregon, in proclaiming jurisdiction to validate both the enactment and the enforcement of the 55 MPH National Maximum Speed Limit repugnant to Article IV, Sec. 4 of the United States Constitution on the ground that such an action by the trial court is contrary to our republician form of Government?

7.

Is the Oregon Transportation Commissions' enactment, and

the enforcement of, the 55 MPH National Maximum Speed Limit under the threat that "failure to comply will result in the withholding of approval of Federal-aid Highway Projects," the District Court for Wasco County Oregon proclaiming jurisdiction to enforce the 55 MPH National Maximum Speed Limit law/rule, the Oregon Court of Appeals and the State Supreme Court both affirming the trial Courts decision, in violation of Article III, Sec. 3, Clause 1, of the United States Constitution on the ground that such an act is attempting to obalish our republician form of government by the use of force?

8.

Is the Oregon Transportation Commissions demanded enactment and enforcement of the 55 MPH National Maximum Speed Limit under the threat as set forth in Title 23 U.S.C. Sec. 154, "The Secretary of Transportation shall not approve any project.....in any State which.....has a maximum speed limit.....in excess of fifty five miles per hour", the District Court for Wasco County Oregon proclaiming jurisdiction to the enforcement of this rule, the Oregon Court of Appeals and the Oregon State Supreme Court decision affirming the trial court decision repugnant to Amendment I, Sec. 1, of the United States Constitution on the ground that such a decision under color of law is respecting an establishment of religion and prohibiting the free exercise of Christianity?

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

The Constitutional provisions which Appellant contends has been violated by the denial of a jury trial to rule on the justice of the law/rule, by the Oregon Transportation Commissions demanded enactment and enforcement of this law/rule...or else, by the District Court for Wasco County proclaiming jurisdiction to the enforcement of this law/rule, and by the Oregon Court of Appeals and Oregon State

Supreme Court affirming the trial court decision are:

> Article IV, Sec. 4, The United States shall guarantee to every State in this Union a republican form of government.....
>
> Article VI, Sec 2, This Constitution, and the laws of the United States which shall be made in pursuance thereof; shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or law of any State to the contrary notwithstanding

Statement of Case

Appellant, a natural born citizen of the United States, instituted this action on his own behalf. The action, filed "Specialy" rather then "Generally" in the form of a "Motion to Dismiss (Lack of Jurisdiction)", seeks declaratory judgement, common law jury presiding, that the 55 MPH National Maximum Speed Limit as enacted and enforced in the State of Oregon violates the United States Constitution. The appellant relied upon the Oregon State Constitution. Article I, Sec. 16 of the Oregon Constitution mandates in civil cases the right to a jury trial shall remain inviolate, and Article 1, Sec. 17 of the Oregon Constitution mandates that the jury decides the law and facts as in civil cases. Appellant believes that only a Constitutional act of the legislative assembly is binding as law. That is, that any binding act of the legislature would be in pursuant of the State and Federal Constitution. However the enactment and enforcement of the 55 MPH National Maximum Speed Limit in Oregon does not meet the State and Federal Constitutional Standards. Article III, Sec. 1 of the Oregon State Constitution mandates the powers of the government shall be divided into three seperate departments, the Legislative, the Executive, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided. Article III, Sec. 2 of the Oregon State Constitution mandates,

the Legislative Assembly shall have power to establish an agency to exercise budgetary control over all executive and administrative state officers, departments, boards, commissions and agencies of the State Government. Article III, Sec. 3, Cl. I of the Oregon State Constitution, establishes that the legislative Assembly is authorized; (a) Where an emergency exists, to allocate to any state agency, out of any emergency fund that may be appropriated for that purpose.. (b) Where an emergency exists, to authorize any state agency to expend, from funds dedicated or continuously appropriated for the use and purposes of the agency.

Article III, Sec. 3, Cl. 2 of the Oregon Constitution mandates, The Legislative Assembly shall prescribe by law what shall Constitute an emergency for the purpose of this section.

Appellant contends that the Legislative Assembly in delegating their power to another department of State Government is in violation of the Oregon State Constitution. This deligation of power and the State Courts of Oregon upholding this deligation of power to the Oregon Transportation Commission and denying appellant a jury trial to rule on the justice of this enactment is contrary to Article VI, Sec. 2 of the United States Constitution, as it is not in pursuant thereof and can be noted as follows.

1. **Jury Trial in Civil Cases.** The Oregon Constitution mandates, in civil cases the right of trial by jury shall remain inviolate, Ore. Const. Art. I, Sec. 17. This provision provides the proper remedy by which a civil case, such as a request for a special appearance to challenge the constitutionality of an Act of the State Government, the rights it confers; the duties it imposes; the protection it affords; the protection it creates; and the office it creates; is to be administered.

2. **Power of Jury in Criminal Cases.** The Oregon Constitution mandates, the jury shall determine the law.....as in civil cases. Ore. Const. Art. I, Sec. 16. This provision makes it perfectly clear that it is not only a right, but

duty, of the jury to determine the law in both criminal and civil cases. This is not only for the protection of the appellant against unconstitutional legislation, but it also protects the juries as all persons are presumed to know the law, meaning that ignorance of the law excuses no one; if any person acts under an unconstitutional statute, he does so at his peril and must take the consequences. 16 Am Jur. 2nd Sec. 178, Protection of Rights.

An unconstitutional act is not law; it confers no right; it imposes no duties; it affords no protection; it creates no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed. Norton v. Shelby County. 118 U.S. 425, 442, (1886)

3. **Administration of Justice.** The State Constitution mandates that every man shall have remedy by due course of law. Ore. Const. Art. I, Sec. 10

This provision establishes the fact that appellant is entitled to those rights as set forth in the Ore. Const. Art. I, Sec. 16 and 17. The State Courts of Oregon, below mentioned, would rather ignore this due process clause

4. **Separation of Powers.** The State Constitution mandates that no person charged with official duties under one of the three departments, shall exercise any of the functions of another, except as in this Constitution expressly provides. Ore. Const. Art. III, Sec. 1

This provision is to prevent the centralization of power under one department of government, and establishes a check and balance system, to keep the separate departments within the framework of the State and Federal Constitution. However the State Legislative Assembly did deligate its authority, to prescribe by law what constitutes an emergency and to regulate the funds expended by any state agency, where an emergency exists, to the Oregon Transportation Commission.

Commission enacted the 55 MPH National Maximum Speed Limit due to an emergency caused by an oil shortage, accompanied with the enactment is a threat of withholding Federal funds for non compliance. The State Courts of Oregon are affirming and enforcing the dictates of the Oregon Transportation Commission, to govern the speed limit within the state, in lieu of the fact that, "any fundamental or basic power necessary to government cannot be delegated"; 16 Am Jur, 2nd Sec 210: Wilson v. Philadelphia Scho. Dist. 328 Pa 225, 195 A 90 113 ALR 1401.

"The State Legislature not the State Department of Transportation, (Oregon Transportation Commission?) has the power to lower the Speed Limit for such a reason, as conservation. The Department of Transportation may lower Speed Limits only for engineering or safety reasons." State of Florida v. Leonard Robbins, Broward Co. Ct. Fla 75-37498 TT-10.

5. Laws depending on authorization in order to take effect; The State Constitution prohibits the passage of any law, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution. Ore. Const. Art. I, Sec 21. However the enforcement of the Oregon Transportation Commissions enactment of the 55 MPH National Maximum Speed Limit is dependant upon such an unlawful authority. The enforcement of this unlawful authority is what qualifies the State for Federal-aid Highway Project funds. The definition that best describes this force being exercised by the Oregon Transportation Commission to enforce their unlawful authority on the State of Oregon is accurately defined in Black's Law Dictionary under Bribery, Coercion, and Extortion.

How The Federal Questions Were =Rasied And Decided Below

Appellant filed a "special" appearance to challenge the authority of the 55 MPH National Maximum Speed Limit and the courts jurisdiction to enforce the rule as appellant asserted the enactment violates Article VI, Sec. 2 of the United States Constitution and to enforce this rule is in violation of Article IV, Sec 4, of the United States Constitution. Appellant further requested a common law jury to precide over the "special appearance".

The District Court of the State of Oregon for Wasco County denied the request for a jury trial stating the jury could not rule on the law. The court further proclaimed it had jurisdiction to decide on the special appearance, filed in the form of a "Motion to Dismiss (Lack of Jurisdiction) and did deny the Motion to Dismiss.

On appeal, the Court of Appeals affirmed the Judgements below without opinion.

On appeal, the Supreme Court affirmed the Judgements below without opinion.

The Federal Questions Are Substantial

1

The judgement of the below mentioned State Courts of Oregon presents the substantial question whether a State Court can deprive appellant of a jury trial to determine the justice of a law/rule that enactments and enforcement is accomplished through Bribery, Coercion, and/or Extortion, or whether appellant is protected by the Supremacy Clause as mandated by the United States Constitution.

The appellees are taking the stand that the appellant was charged with violation of ORS 487.475 (1), a class C traffic infraction. A prosecution under ORS 487.475 does not entail a sentence of imprisonment, ORS 484.360 (2) (c) (2), and is therefore not a crime. ORS 161.515 (1) (3). A prose-

cution under ORS 487.475 is not subject to the infirmities of the prosecution in Brown v. Multnomah County, 280 OR 95, P2d (1977), and is not a "criminal case". Therefore, Article I, Sec 16 of the Oregon Constitution does not apply. They further state, Article I, Sec 17, Oregon Constitution provides, "In all civil cases the right of Trial by Jury shall remain inviolate." But the right to a jury trial in civil cases under Article I, Sec 17 is only extended in the classes of cases where the right was customary at the time the constitution was adopted and in cases of a like nature Brown v. Multnomah County, 29 Or App 917, 939, 566 P2d 522 (1977), rev'd on other grounds 280 Or 95 (1977). Traffic offenses were tried summarily at common law. (Res. Br. 3)

With regards to the juries right to rule on the law the appellees cite ORS 17.030 which provides: (Res. Br. 2)

> "An issue of law shall be tried by the court, unless referred as provided in ORS 17.705 to 17.765. An issue of fact shall be tried by a jury, unless tried by the court or referred as provided in ORS 17.035, 17.205, 17.431, and 17.705 to 17.765."

Appellant wishes to establish the fact that he requested to appear "Specially" rather then generally, to challenge the justice of the law, in a court of law, not in a court of equity or a blend of both, with a Federal Common Law Jury presiding. That this is a civil case and not dealing with a traffic infraction. Nor is appellant asking for a jury trial to find whether he violated the speed limit.

Since Magna Carta, in 1215, there has been no clearer principle of English or United States Constitutional law, than that, in criminal cases, it's not only the right and duty of the juries to judge what are the facts, what is the law, and what was the moral intent of the accused; but that it's also their right, and their primary and paramont duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of such laws. In support of the above mentioned juries rights, powers, and duties, I

cite the following U.S. Supreme Court decision;

> GEORGIA v. BRAILSFORD. 3 DALL. 1 (1794). Chief Justice Jay told the jury that, while it was the province of the court to determine the law and the province of the jury to determine the facts, the jury nevertheless had the power to determine both issues.

This was the first case involving a jury trial before the U.S. Supreme Court, which empanels juries only on certain rare occasions. What makes the case interesting is the fact that Chief Justice Jay, who wrote the opinion, also wrote part of the Federalist Papers. Joining him in his opinion were Justice James Wilson and William Paterson, both delegates to the Constitutional Convention and signers of the Constitution; John Blair, a former Chief Justice of Virginia and a signer of the Constitution; and William Cushing, a former Chief Justice of Massachuetts. It's fair to say these men knew our law very well. Chief Justice Jay ruled this way because he knew that the Constitution he had recently helped to write required it. Most judges would today be horrified by this opinion because it gives laymen the right, when serving on a jury, to refuse to follow acts of the legislature and the fiats of the courts. But that is exactly what the men who wrote our constitution had in mind. They felt that all government power had to be held in check, constantly, or it would degenerate into tyrrany.

The United States Court of Appeals for the District of Columbia has clearly acknowledged;

> "There can be no doubt that the jury has an unreviewable and unreversible power ... to acquit in disregard of the instructions on the law given by the trial judge."
> U.S. v DOUGHERTY, 473 F 2d 1113, 1139 (1972)

The United States Court of Appeals for the District of Maryland;

> "We recognize, as appellants urge, the undisputed power of the jury to acquit, even if it's verdict is contrary to hte law given by the judge, and contrary to the evi-

dence. This is a power that must exist as long as we adhere to the general verdict in criminal cases, for the courts cannot search the minds of the jurors to find the basis upon which they judged. If the jury feels that the law under which the defendant is accused is unjust, or that exigent circumstances justified the action of the accused, or for any reason which appeals to their logic or passion, the jury has the power to acquit, and the courts must abide by that decision."
U.S. v. Moyland, 417 F 2d 1002, 1006, (1969)

Unless such be the right and duty of jurors, it's plain that, instead of juries being a "palladium of liberty", a barrier against the tyranny and oppression of the government, they are really mere tools in its hands, for carrying into execution any injustice and opression it may desire to have executed. Were it not for each juror's right to rule on the interpretation of the law, and the Justice of the law, juries would be no protection to an accused person, even as to matters of fact; for, if the government can dictate to a jury any law whatever, in a criminal case, it can certainly dictate to them the laws of evidence. That is, it can dictate what evidence is admissible and what's inadmissible, and also what force or weight is to be given to the evidence admitted. If the government can thus dictate to a jury the laws of evidence, it can not only make it necessary for them to convict on a partial exhibition of the evidence rightfully pertaining to the case, but it can even require them to convict on any evidence whatever that it pleases to offer them.

That these rights and duties of jurors must necessarily be such as are here claimed for them, will be evident when it is considered what the trial by jury is, and what is its object.

"The trial by jury is a trial by the country", that is, by the people, as distinguished from a trial by the government.

It was anciently called "trial per pais", that is, "trial by the country". Now, in every criminal trial, the jury are told that the accused "has, for trial, put himself upon the country.

The object of this trial "by the country", or by the people,

in preference to a trial by the government, is to guard against every species of opression by the government.

In order to effect this end, it is indispensable that the people, or "the country", judge of and determine their own liberties against the government; instead of the government's judging of and determing its own powers over the people. How is it possible that juries can do anything to protect the liberties of the people against the government, if they are not allowed to determine what those liberties are?

Any government, that is its own judge of, and determines authoritatively for the people, what are its own powers over the people, is an absolute government of course. It has all the powers that it chooses to exercise. There is no other – or at least no more accurate – definition of despotism than this.

On the other hand, any people, that judge of, and determine authoritatively for the government, what are their own liberties against the government, of course retain all the liberties they wish to enjoy. And this is freedom. At least, it is freedom to them; because, although it may be theoretically imperfect, it, nevertheless, corresponds to their highest notions of freedom.

The right of the jury to disregard either the law, as laid down by the "presiding judge", so-called, of the facts, as permitted by him to be placed in evidence, is referred to in legal terminology as the jury's Prerogative of nullification – which means in ordinary language, as does the expression, "jury lawlessness," that where the jurors cannot in conscience impose blame, they cannot in conscience allow punishment.

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Now the prerogative of nullification is not merely a legitimate, but also a praiseworthy, option of the jury. It is a mechanism that permits it, as spokesman for the community's conscience, to disregard the strict requirements of man-made

law, and the "presiding judges instructions in regards to same, where it finds that those requirements cannot justly be applied in a particular case. The doctrine or prereogative of nullification, in brief, "permits the jury to bring to bear on the criminal process a sense of fairness and particularized justice. "(DOUGHERTY, cited above at 1142.) These, obviously, are worthy objectives.

"The way the jury operates may be radically altered it there is alteration in the way it is told to operate". (DOUGHERTY, cited above at 1135.) And its options are by now means limited to the choices presented to it in the courtroom. "The jury gets its understanding as to the arrangements in the legal system from more than one voice. There is the formal communication from the judge. There is the informal communication from the total culture–literature; current comment; conversation; and, of course, history and tradition. (DOUGHERTY, cited above at 1135.)

The totality of input from the above mentioned informal sources should be such as to convey adequately enough to the jurors the idea of prerogative, of their freedom to decide the guilt or innocence of a defendant according to their own conscience–regardless of the facts permitted by the "presiding judge" to be placed in evidence, and regardless of his so-called, "Charge to the jury", which final set of unasked for and generally biased instructions will contain among other things, what the presiding judge considers to be the controlling law, or what the presiding judge wants the jurors to think is the controlling law, in the particular case being tried by the jury.

The law as written, and invoked by prosecutors, demand conviction of persons whom local or even general opinion does not desire to punish. See "Law in Books and Law in Action, "Dean Roscoe Pound 44 American Law Review, 12, 18 (1910). Hence, jury disregard of the limited and general conviction–oriented evidence presented for its consideration, and jury disregard for what the presiding judge wants them to believe is the controlling law in any particular case, sometimes facetiously referred to as "jury lawlessness", is not

something to be scrupulously avoided but, rather, encouraged; as witness the following quotation from the eminent legal authority above-mentioned;

DOUGHERTY, cited above, note 32, at 1130)

"Jury lawlessnessiis the greatest corrective of law in its actual administration. The will of the state at large imposed on a reluctant community, the will of a majority imposed on the vigorous and determined minority, find the same obstacle in the local jury that formerly confronted Kings and ministers."

And as for ORS 17.030 cited by counsel for appellees, which provides:

"An issue of law shall be tried by the court, unless referred as provided in ORS 17.705 to 17.765. An issue of fact shall be tried by a jury, unless tried by the court or referred as provided in ORS 17.035, 17.205, 17.431, and 17.705 to 17.765."

Appellant finds all the above-cited ORS's in one way or another are giving the trial court judge the sole power to rule on the law or deligate this power to a referee, who is under guidance and control of the trial court judge. Although it is odd that a referee is to be sworn in with the same authority as a jury and their decision is accepted and carries the weight of a jury and they rule on the law. This proclaimed authority of the trial court judge is the authority which appellant is contesting...not condoning.

When the Legislature passes a law, the intent of which is to deprive an accused of a basic fundamental right, to have a jury determine the justice of the law, such as the above state ORS 17.030 et al, it is in conflict with the United States Constitution Article VI, Sec. 2.

Article 6, Sec. 2; "The Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

ORS 17.030 is also in conflict with the 14th Amendment of the United States Constitution, Sec. 1;

Amend. 14; "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; Nor shall any State deprive any person of life, liberty, or property, without due process of law; Nor deny to any person within its jurisdiction the equal protection of the laws.

ORS 17.000 being so enacted has no merit to it as provided in 16 Am Jur, 2nd Sec. 177;

"An unconstitutional statute though having the form and name of law, is in reality no law, but wholly null and void and ineffective for any purpose. It imposes no duty, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it. No one is bound to obey an unconstitutional statute and no courts are bound to enforce it."

This being further supported by 16 Am Jur. 2nd Sec 178 Constitutional Law;

"The general rule is that an unconstitutional act of the legislature protects no one. It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one; if any person acts under an unconstitutional statute, he does so at his peril and must take the consequences."

Defendant finds this same opinion again in 16 Am Jur 2nd Sec. 547;

"Daniel Webster, James Otis and Sir Edward Coke all point out that the mere fact of enactment does not and cannot raise statutes to the standing of law not everything which may pass under the form of statutory enactment can be considered the law of the land."

Defendant also cites U.S. Sup. Ct., Mayburv v Madison.

1803, 2 L Ed. 60; 1 Cra 137; ref. 6 Whea: 246 & Wal 601; "Law repugnant to the Constitution is VOID"...."an act of the Legislature, for I cannot call it law contrary to the first great principles of the social compact (Constitution) cannot be considered a rightful exercise of Legislative authority".

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The existance and nature of the form of Government is a matter for this Court to decide.

This case presents a far more extreme impairment to the United States Constitution as a whole rather than to a specific part thereof.

Ten days prior to his assassination, President John F. Kennedy delivered an address at the Columbian University and stated;

> "The high Office of President has been used to foment a plot to destroy the Americans freedom, and before I leave office I must inform the citizen of his plight".

This plot was initiated in 1933 when President Franklin D. Roosevelt amended the "Trading With The Enemy" Act of 1917, which gave powers and authorities to the President at any time which, until then, had been reserved to times of war. This Amendment granted self-delegated power to the President to take control over the entire Nation, upon his declaration of a "National Emergency", or "For Other Purposes", which remain unspecified.

On February 16, 1962 President John F. Kennedy exercised his POWER by issuing the following Executive Orders, in pursuance of former President Roosevelt's Amendment; Executive Orders 10095 through 11005, and specifically 10099, as follows. in part;

> Authorized the seizure of the means of transportation and federal control of highways and seaports."

without authorization from Congress, which allowed the President to do away with Congress and/or the Constitution any at time desired, by Executive Order. This became Law on February 20, 1962.

On October 28, 1969, President Richard M. Nixon entered into the above conspiracy for dictatorship, by issuing his Executive Order 11490, which became law on October 30, 1969.

On November 7 and November 25, 1973, President Gerald R. Ford exercised his prior-presidential authorized power and stated, in an address to the Nation, that there existed a "National Emergency" due to a fuel crisis, and caused the Congress of the United States to report out H.R. 11372 and the Senate to report out H.R. 11372, which stated that there was a fuel shortage, and declaring a National Speed Law. This became Public Law on January 2, 1974.

This resulted in the passage of 23 U.S.C. Section 101 and 154. This was a National Maximum Speed Limit and it stated that all states which did not lower their speed to 55 MPH would constitute the following; "Failure to Comply will result in the withholding of approval of Federal-Air Highway Projects", which was bribery, coercion and extortion against each state and therefore is illegal.

Sections of the state traffic laws which uphold this "National Speed Limit" are, therefore, in reality, 23 U.S.C. 101 and 154, or are adopted through bribery, coercion, and/or extortion and are not within the jurisdiction of the State Courts, but, in reality, are within the jurisdiction of the United States District Courts, pursuant to 28 U.S.C. 1355.

The said H.B. 11372, a bill "to conserve energy on the National System of Interstate and Defense Highways", was illegally passed, as it was meant to control the use of a product owned by the private citizens of the United States, in violation of their right to the ownership and use of private property (once purchased, gas becomes private property). The bill was not passed to save lives, to make the highways safer, to do anything other than to "conserve fuel".

Appellant and the citizens of this state and of the United States, are not bound by rules, which are not, in effect, laws. The 55 MPH rule is not a law in Oregon. This statement was published in the East Oregon Newspaper on Monday, July 18

1977, as follows;

> "It may not be widely known, for example, that the 55 MPH speed limit is a rule in Oregon, not a law. The legislature never adopted the speed limit. It simply gave the Transportation Commission the power to set the limit as an energy conservation measure. The Commission did that because Congress passed a law during the gasoline crunch saying that states that didn't comply would loose their federal highway money."

On Thursday, September 15, 1977, in an article published in the East Oregonian News Paper, from Boise, Idaho, an appointed assistant officer in the HUD is promoting federal takeover of planning including transportation.

On September 19, 1977 the news article from Boise, Idaho was confirmed by the East Oregonian on the Editorial page. The article stated that a confidential proposal which had been circulating among HUD officials for several weeks would require land-use, energy, housing, and transportation planning be approved on a "regional" basis by the federal government before federal funding could be approved. The article went on to say, "Some members of the Possee Comitatus and the John Birch Society have warned the past few years of an attempted federal take-over of cities and counties planning. A lot of people laughed off such warnings as being exaggerations by groups which had unreasonable fears about Uncle Sam. But apparently the warnings were accurate.

The now President Jimmy Carter is well aware of this plot, more commonly known by "regionalism" or "regional government", to over throw the United States Constitution and our republician form of government, as President Carter and his administration are proceding with all deliberate speed for the passage of two bills before Congress of the United States and these are House Bill H.R. 2063 and Senate Bill S. 835.

As published in the Spotlight News paper on August 27, 1979, the passage of the bills will give to regionalism the force of law; the executive order on which federal regionalism is based has the status of law, but in truth an executive

order is not a law, because laws must be enacted by both houses of Congress and signed by the President.

Controlling virtually every economic activity——including the way you use your land--the nationwide chain of regional commissions the bills will establish are by far the most sweeping proposal to approach congressional approval. President Carter established "a federal regional council for each of the 10 standard federal regions"; he directed 17 Cabinet departmentssand federal agencies to designate representatives to each of the councils.

The Commissions are mandated to coordinate "the development and growth management activities of state governments and substate entities (counties, cities) with regional policy development, including, but not limited to, economic development, coastal zone (land) management, comprehensive planning, environmental protection, energy conservation and development, TRANSPORTATION, cultural resource development, outdoor recreation planning, and implementation programs."

The above cited acts and proposed acts are in gross violation of Article IV, sec.4, of the United States Constitution as they do not guarantee a republician form of government, but to the contrary the acts attempt to obalish our republican form of government

Those persons who did willfully and knowingly give aid and comfort to those whose acts are subversive to the United States are in violation of Article III, Sec. 3, Cl. 1, "Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

These acts are punishable under Title 18, U.S.C. Sec. 3, 4 2381, 2382, 2383, 2384;

> Title 18 U.S.C. Sec 3; Whoever, knowing that an affence against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact, if the princi-

pal is punishable by death, the accessory shall be imprisoned not more than ten years.

Title 18 U.S.C. Sec 4; Whoever having knowledge of the actual commission of a felony cognizable by the courts of of the United States, conseals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $5000 or imprisoned not more than three years or both.

Title 18 U.S.C. Sec 2381; Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceal and does not, as soon as may be, disclose and make known the same do the President or to some judge of the United States, is Guilty of misprison of treason and shall be fined not more than $1000 or imprisoned not more than seven years, or both.

Title 18 U.S.C. Sec 2383; Whoever engages in rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid and comfort thereto, shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

Title 18 U.S.C. Sec 2384; If two or more persons in any state or Territory conspired to overthrow, put down, or destroy by force the government of the United States, or delay the execution of any law of the United States contrary to the authority thereof, they shall each be fined not more than $20,000 or imprisoned not more than twenty years, or both.

III

It is of great importance to the sovereign citizens that this Court restore Constitutional principles within the State of Oregon and within the several States, for the depriving appellant of a republican form of government is also, at the same

time, depriving appellant of rights secured by the first Amendment of the United States Constitution, which states:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ....."

This is a Christian Nation, as a simple study of the United States History shows, the foundation of our great social compacts, such as the Magna Carta, the Mayflower Compact, the Declaration of Independence, Articles of Confederation, the United States Constitution and its Bill of Rights, are all devinely inspired and are based on the Laws of YEHVEH, as they were professed by Jesus Christ.

This fact is already established by this Court:

"after mentioning various circumstances, added the following words; "and these and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances, that this is a Christian Nation. Holy Trinity Church v. United States, 143 US 471, 28 Feb. 1892.

Black's Law Dictionary defines Christian as follows;

"Christian. Pertaining to Jesus Christ or the religion founded by him; professing Christianity. As a noun, it signifies one who accepts and professes to live by the doctrines and principles of the Christian religion; it does not include Mohammedans, Jews, ragans, or intidels. State v. Buswell, 40 Neb. 158,58 N.W. 782, 24 L.R.A. 68

The doctrines and principles taught by Jesus Christ are the doctrines and principles/Laws of YEHVEH. Any law that is not in pursuant of the United States Constitution is therefore, not in pursuant of YEHVEH's Laws. Consequently when a law is not in pursuant of YEHVEH's Laws, they can be termed Anti-YEHVEH. Anti-YEHVEH then is Anti-Christ.

The Kingdom of YEHVEH is an order of government established by devine authority. It is the only legal government that caneexist in any part of the Universe. All other

governments are illegal and unauthorized... any people attempting to govern themselves by laws of their own making and by officers of their own appointment, are in direct rebellion against the Kingdom of YEHVEH.

Their authority is all assumed——it originated in man. Their laws are not from the Great Law Giver but are the productions of their own false governments. It should be clear that men who believe in such dogmas not only would make poor neighbors, and disaffected citizens, but also mis guided, blind, deaf public servants who are, "Desiring to be teachers of the Law; understanding neither what they say nor whereof they affirm....."" Timothy 1:7

V

The Constitutional prioty must be upheld;

16 Am Jur 2nd Sec. 177..... The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been acted.

Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it. A contract which rests on an unconstitutional statute creates no obligation to be impaired by subsequent legislation. No one is bound to obey an unconstitutional law and no courts are bound to enforce it.

A void act cannot be legally inconsistent with a valid one. And an unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a

statute runs counter to the fundamental law of the land, it is superseded thereby. Since an unconstitutional statute cannot repeal or in any way affect an existing one, if a repealing statute is unconstitutional, the statute which it attempts to repeal remains in full force and effect. And where a clause repealing a prior law is inserted in an act, which act is unconstitutional and void, the provision for the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law.

The general principles stated above apply to the constitution as well as to the laws of the several states, insofar as they are repugnant to the Constitution and the laws of the United States. Moreover, a construction of a statute which brings it in conflict with a onstitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith.

So much for the laws in the State of Oregon which denies appellant a jury trial and that deny the jury the right to decide the law. Likewise the 55 MPH National Maximum Speed Limit is void.

V

The State Courts of Oregon failed to apply the precedent established by this Court.

"The declaration that "shall" is manditory merely states a required act and means that the particular provision does not permit of alternative or permissive procedures".

Averill v. Lincoln, 24c 2d 761 at 764.

"In all prosecutions within the jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial SHALL be by jury, unless the accused shall in open court expressly waive such trial by jury .... "

Schick v. United States, (1904) 195 US 71, 73-100

"The words of the Constitution upon this subject are clear and explicit. They leave no room for interpretation. Its express mandate is that "the trial of all crimes, except in cases of impeachment, shall be by jury"... Constitution Art. 3. When the Constitution was placed before the people for adoption or rejection, many deemed those words, explicit as they were, inadequate to secure all the benefits of a jury trial as it existed at common law.
Schick v. U.S. Supra.

"The courts today holds that the right to a trial by jury guaranteed defendant in criminal cases in Federal Courts by Art. III of the U.S. Const. and by the XVI Amendment is also guaranteed by the XIV Amendment to defendants tried in State Courts." I took the position, contrary to the holding in Twining v. New Jersey, 211 US 78, that the XIV Amendment made all the provisions of the Bill of Rights applicable to the States ...concluded that the Bill of Rights Amendments that are "implicit in the concept of ordered Liberty" are State invasion.....Among these are the right to trial by jurv. "
Duncan v. Louisiana, (1968) 391 US 156

"I believe the only way to steer this country towards its destiny is to follow what our Constitution says, not what judges think it should have said... the people and their elected represenatives, not judges, are constitutionally vested with the power to amend the Constitution. Judges should not usurp that power in order to put over their own views."
Boddie v. Connecticut, 28 L Ed 2d. 113 at 128, 129.

CONCLUSION

This Court should summarily reverse the judgement of the Supreme Court of the State of Oregon and find the ORS 17.030, and the 55 MPH National Maximum Speed Limit rule null and void in their entirety as in violation of the Supremecy Clause of the United States Constitution.

DARWIN SMITH, In Pro--Per
P.O. Box 694
534 N.W. Cedar Pl.
Pilot Rock, Ore. 97868

RESPECTFULLY SUBMITTED

Darrell Darwin Smith

Darrell Darwin Smith In Pro--Per

APPENDIX

Decision of the District Court of the State of Oregon for Wasco County

This case presents two issues. The first is whether the jury can decide the justice of the law. The other is whether the District Court for Wasco County has legal jursidiction to preside over the case.

Appellant was cited into court for twice violating the 55 MPH National Maximum Speed Limit, in Dec. 1977, a Class C traffic infraction, ORS 487.475 (1).

What resembles the old slide of the hand trick, the citizens of the State of Oregon are denied a jury trial for the more minor traffic offenses or infractions. This puts the citizen that's been charged for one or more infractions solely at the mercy of the judge. Appellant has substantial enough reasons, that if presented to an untampered Common Law Jury an acquittal could almost be guaranteed. Citizens in the neighboring States, for the same offense have been acquited. To obtain a jury trial, appellant filed a pre-trial "Motion to Dismiss"(Lack of Jurisdiction), it being filed "specialy" rather then generally, in which appellant challenge the jurisdiction and authority of the District Court of Wasco County.

The Court set the Date of Sept. 18, 1978 to take up the Motion to Dismiss, without a jury. Appellant did then send a letter to the Court informing them of the fact that this was a special appearance and required a jury trial, appellant did demand a jury trial. The Court replied that they would take up the request for a jury trial at the same date as the motion.

The Court did take up the request for a jury trial and the Motion to Dismiss and denied them both on the ground that the jury cannot decide the justice of the law and that the Court has jurisdiction in the case.

Appellant remained mute through the trial on the infractions as it is appellants contention then as now that the trial court does not have jurisdiction.

Decision of the Court of Appeals of Oregon

DARRELL DARWIN SMITH, Appellant, v.
STATE OR OREGON, Respondents.

Appellant appealed both decisions of the trial court to the Court of Appeals. Briefs were submitted on April 6, 1979 and the Court affirmed the trial courts decision without opinion on April 23, 1979.

Decision of the Supreme Court of Oregon

On appeal, the Supreme Court of Oregon denied review on June 13, 1979, and affirmed the lower court decision without opinion.

APPENDIX B

IN THE SUPREME COURT OF THE
STATE OF OREGON

DARRELL DARWIN SMITH,	)	
	:	
Appellant,	)	Trial Court
	:	No. T-68530, 686
v.	)	
	:	
STATE OF OREGON	)	Appellate Court
	:	No. 12281
Appelle.	)	

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that DARRELL DARWIN SMITH, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgement of the Supreme Court of the State of Oregon, affirming the trial court decision, entered in this case on the 25th day of June 1979.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257 (2)

DARRELL DARWIN SMITH,
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